



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 20, 2023

Via ECF

The Honorable Barbara C. Moses
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *The New York Times Company v. U.S. Dep't of Health and Human Services*,
No. 22 Civ. 9070 (BCM) (S.D.N.Y.)

Dear Judge Moses:

This Office represents the U.S. Department of Health and Human Services (“HHS”) in the above-referenced case brought by plaintiff The New York Times Company pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I write respectfully on behalf of both parties pursuant to the Court’s order dated December 14, 2022, Dkt. No 16, to provide the Court with a status update in this matter.

As outlined in the complaint, this matter relates to three separate FOIA requests submitted by The New York Times Company to HHS—one from August 2, 2022; one from September 16, 2022; and one from September 22, 2022. HHS is currently working to respond to each of these requests, as outlined below.

August 2, 2022 Request: Following discussions between HHS and The New York Times Company about the scope of The New York Times Company’s request, HHS has identified several excel spreadsheet files responsive to the August 2, 2022 request. HHS expects that these spreadsheets will be produced to The New York Times Company by February 3, 2023.

September 16, 2022 Request: In early January, HHS has identified several spreadsheets responsive to The New York Times Company’s request. The parties are currently discussing ways in which HHS could protect the privacy of individuals identified within those spreadsheets while still satisfying The New York Times Company’s informational needs. HHS made a proposal to The New York Times Company on January 8, 2023, and The New York Times Company made a counterproposal on January 9, 2023. HHS is currently evaluating that counterproposal. HHS expects to make a production as soon as an agreement has been reached, or negotiations have otherwise been exhausted.

September 30, 2022 Request: On December 7, 2022, HHS provided a final release of twenty-five pages to The New York Times Company. On December 11, 2022, The New York Times Company raised several questions about the completeness of HHS’s production. In response, HHS conducted searches and identified additional records that may be responsive to The New York Times Company’s request. However, before making further productions, HHS intends

to have conversations with The New York Times Company to ensure that the documents are indeed responsive and to attempt to narrow the September 30, 2022 request in a manner that would avoid potentially time-consuming line-by-line review of tens of thousands of rows of excel data. The parties intend to begin discussing these issues next week.

* * *

Because the parties do not believe we have any issues that require the Court's attention, we respectfully propose to provide the Court with an additional status update by February 24, 2023.

We thank the Court for its attention to this matter.

Respectfully submitted,

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